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EAST AFRICAN RAILWAYS AND HARBOURS

FINAL SUBMISSION
to the
INDUSTRIAL COURT, KENYA
by the
East African Railways and Harbours
on the issue of
"Alleged Victimisation of
Union Officials"

1. Arrangement for Final Submission

This submission is divided into two PARTS. PART I is a reply to the Claimant's final submissions. PART II contains the Management's final submissions, as the Respondent, in support of its reply to the Union's submissions.

PART I

2. Paras. 1 & 2

(i) The Respondent denies that the Union Officials namely, Messrs. Lole, Kima and Bubwerwa have been victimised. The Court will have noted that no mention has been made by the Union regarding Mr. V. Eku who was transferred in similar circumstances. It might be appropriate to mention that Mr. Eku refused to take advantage of the fourteen days grace to stay in Kisumu and requested that he should be allowed to proceed on transfer inspite of the Union's request. Mr. Eku similarly refused to be released from duty to appear before the Court as one of the Claimant's witnesses in support of this issue.

(ii) Management concedes that the wording of the underlined sentence in the following quotation from the

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Sikio is liable to misinterpretation "transfer of employees": two employees primarily responsible for the dreadful scene purported in Mombasa last November have been transferred; two others responsible for the unconstitutional strike which occurred at Kisumu at the same time have also been transferred. Management deems these transfers to be necessary for disciplinary reasons. It will be observed that the quotation refers to "employees primarily responsible for ...." The intention was for the sentence to convey the sense that these employees' transfers were considered necessary if discipline was to be maintained in those stations, and as as it will be established in Part II of this submission the transfer of an employee in the service of the E.A.R.& H. cannot be regarded as a disciplinary action. These employees in their capacity as Branch Officials were responsible for the detailed strike arrangements at their stations.

3. Paras. 3, 4 & 5

Management did not wish to discipline the Branch Officials concerned. Again the transfer of an employee in the service of the Administration is not a disciplinary action and is never so interpreted. If the employees had been considered to have committed an offence they would have been dealt with strictly in accordance with laid down disciplinary procedures. The Only disciplinary procedure, applicable to employees of the E.A.R.& H. is that laid down in the E.A.C.S.O. Public Service Commissions Regulations and this was not used.

4. Para. 6

(i) Management agrees with the Claimant that "organising a strike constitutionally or unconstitutionally

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under the present rules of the E.A.R.& H. is not an offence at all nor is it mentioned anywhere in the Regulations and Rules of the E.A.R.& H." This is why Management was not in a position to deal with the Branch Officials as if they had committed an offence as defined in Staff Regulation G.2 which states:

> " (a) An employee may be dealt with under these Regulations and charged with committing an offence if he -
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> neglects, disregards or without sufficient reasons fails to comply with an order, regulation, standing order or departmental instruction; or
>
> incapacitates himself for the performance of any of his duties by indulgence in any stimulant; or
>
> improperly discloses any information respecting the affairs of the Administration to any unauthorised person; or
>
> is convicted by a Court of an offence; or
>
> otherwise misconducts himself within the meaning of paragraph (b)
>
> (b) For the purpose of this regulation, "misconduct" means dishonesty, serious neglect of duty, disobedience to the orders of a superior, any act of insubordination, being under the influence of liquor whilst on duty, and such other behaviour as the General Manager may certify to be misconduct."

(ii) Mr. Kima was first informed of his impending transfer in writing on Wednesday, 6th January; Mr. Lole verbally by his District Officer at a Housing Committee

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meeting on Tuesday, 12th January and this was confirmed in writing later that day; Mr. Bubwerwa in writing on 12th January. Messrs. Kima and Lolc did not actually leave Mombasa until 12th February, and Mr. Bubwerwa left Kisumu on 16th February. As the Court will be aware from the note on the meeting held on 20th January between the Claimant's representatives and those of Management it was stated that "as the representatives had linked the transfers with the strikes at Mombasa and Kisumu and since they also agreed that the Officials had disobeyed their instructions he (the General Manager) wished to know what action they (the Union's representatives) had taken or intended to take against them. He expressed his willingness to consider a suitable recommendation from the Union. After a short discussion it was agreed that the Union would recommend action against the Union Officials which it considered appropriate under the circumstances and that this would be forwarded to the General Manager within two weeks from the date of the meeting; meanwhile the transfers should not be effected.

(iii) It is true that the Union disassociated itself from the note prepared by the Principal Industrial Relations Officer on this meeting and at the meeting held on 3rd February, The Union was challenged to produce an alternative record on the meeting; this has not been done to date. At the expiry of the fourteen days notice the Union advised Management on 3rd February, 1965 that the Union did not have any specific recommendation but that it intended:

(a) To amend the Constitution of the Union in order to deal with offenders who acted unconstitutionally and

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(b) proposed to take no action in respect of Messrs. Kima, Lole, Bubwerwa and Eku

and in the circumstances the Union was informed that Management would instruct the Departments concerned to proceed with the transfers of not the Branch Officials as such but of employees of the E.A.R.& H. Messrs. Lole, Kima and Bubwerwa. The Court is respectfully requested to note the difference. Management could not transfer Union Officials since this meant that at the new stations they would remain Union Officials; Management therefore transferred employees of the E.A.R.& H. giving adequate time for the employees to hand over to new or temporary Branch Officials.

(iv) The Court may wish to take note of the views of the Ministry of Labour and Social Services as given in the note on the meeting held in the office of the Assistant Permanent Secretary on 8th February, 1965. At that meeting, Mr. Owuor on behalf of the Ministry "ascertained from Mr. Ottenyo that these strikes took place at the instigation of the employees concerned despite instructions from Mr. Ottenyo and the other Union leaders that there should not be a strike as a result of an agreement that had been reached between the Union and Management on 4th November". In these circumstances, Mr. Owuor stated that the Officials were acting "contrary to the policy and instructions of the Union and in doing so they removed from themselves the protection which they would normally have as Union Officials if they were carrying out the Union's policy. They were therefore not being victimised and it could only be held that they were if Mr. Ottenyo was to accept that the two strikes and disturbances were part of the Union's policy. Mr. Ottenyo

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was unable to agree that this was the case". The quoted views of the Ministry of Labour have not been challenged by the Union.

(iv) Management further submits that in deciding to transfer the employees concerned the Management of the E.A.R.& H. did not overlook the agreement in Central Joint Council which says that

> " Management viewed the Union's case with sympathy but it was agreed that a letter would be sent to all Departments requesting them not to transfer Union Officials unless this was absolutely necessary and in such cases to give reasonabe notice".

This agreement refers to normal circumstances; in this case the circumstances were abnormal.

5. Para. 7

Management agreed that this was not the first unofficial strike in the E.A.R.& H. Management however, submits that this was the first time an unofficial strike had developed to full scale rioting which led to not only a severe inconvenience to the public and the loss of revenue but also to the injury of a number of senior African and Asian staff of the E.A.R.& H. and to a member of the public solely because the Branch Officials refused to accept instructions given to them by one of their National Leaders and information conveyed to them by responsible officers of the E.A.R.& H. It is admitted that unusual circumstances prevailed and in the Management's view these necessitated an administrative action being taken by the Management in the interest of the service.

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6. Para. 8

The Union does not specifically say that the Branch Officials had instructions to proceed with strike action inspite of any agreement likely to be reached between Management and the Union. Throughout the afternoon of 4th November, 1964, the Claimant assured Management that there would be no difficulty in calling off the strike. Since then Management has been under the impression that the strikes at Mombasa and Kisumu were not organised with the approval of the Union Headquarters.

7. Paras. 9 & 10

Management considers that it has a right to inform its employees of the facts as it sees them especially when there is reason to believe that the staff have not been informed of the issues at stake in detail. In this case Management was satisfied that the staff had no details of the issue in dispute. The Claimant's remarks at the end of the quotation reveals his attitude and must be dismissed as irresponsible.

8. Para. 11

Management denies that the Branch Officials concerned have been victimised. They were merely transferred from the stations because their continued presence at those stations was not only considered to be in the best interest of the service but in fact prejudicial to the relationships between the Management of the E.A.R.& H. and the Railway African Union (K). In refusing to obey the instructions of their Headquarters Management was satisfied that the employees were not fit to hold the office they held in the Union which Management respected and continued to recognise. The Management stands by its submission that they were transferred

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as employees and not as Officials of the Union.

9. Para. 12

From the evidence of the Principal Industrial Relations Officer, Mr. Mwangola the Court will have gathered that Mr. Ottenyo was kept in the picture regarding the feelings of Management following the strikes at Mombasa and Kisumu. Mr. Mwangola stated that on his return from Mombasa he informed Mr. Ottenyo on several occasions both verbally and over the telephone how strong Management felt regarding the role played by the Branch Officials in Mombasa and Kisumu during the strikes. Mr. Ottenyo has not denied this; in fact the Claimant has accepted that the Branch Officials disobeyed the instructions given to them to call off the strike on 4th November, 1964. Management gave the Union at least two months to take action against the Officials concerned and the transfers were only ordered after the Union had declared that it did not propose to take any action against the Branch Officials who had disobeyed the instructions of the National Officials. The decision to transfer the Branch Officials was not taken to weaken the Union at Mombasa and Kisumu. Management has a duty to the public to maintain discipline and morale in the service; these had been prejudiced in Mombasa and Kisumu and Management could not just do nothing about it. The Respondent will comment in greater detail in Part II of this submission regarding the role played by Messrs. Kima and Lole during the dreadful scenes at Mombasa.

10. Para. 13

(i) The Court will be aware from paragraph 21 of Management's submission in respect of this issue that the letter at Appendix 'B' is only intended to give the Court "an idea of the kind of thing that happened" at

Mombasa and the feelings of the victims. The Union has taken a lot of trouble commenting on the contents of this letter which the Management only intended to show that the strikes at Mombasa was not just a peaceful withdrawal of labour; for violent scenes ensued and the intervention of the Police was required. Had the Management been satisfied beyond reasonable doubt that Messrs. Lole and Kima "not only organised the strike but organised the massive violence against" the signatories of the letter, Management would have instituted disciplinary proceedings against them which would have almost certainly resulted in their being dismissed from the service; instead they were merely transferred to other stations and treated like any other employee transferred in the interest of the service.

(ii) The Respondent is grateful for the fact that the Claimant admits that Mr. Nyandong does not exaggerate anything in his evidence. The Claimant accepts that a mob of about 150 to 200 broke the fence and dragged Mr. Nyandong from the office. For two miles he was slapped, kicked, humiliated and jeered at to the Makupa Football Field where the strikers had assembled under the control of Messrs. Kima and Lole, On arrival at the field Mr. Nyandong was deposited at the feet of Mr. Lole who was standing near Mr. Kima. Mr. Lole and Mr. Kima laughed and generally enjoyed the sight -- an action which cannot be construed otherwise than symbolic approval of what had happened to Mr. Nyandong. The intention of Mr. Nyandong's captors was to send him to their leader for subsequent evidence indicate that they were not interested in what their leader did with him. Did either Mr. Lole or his superior Vice President, Mr. Joel Kima condemn what the strikers had done ? they did not; instead they put him under arrest and gave him an escort to allow him to close

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the stores. The Claimant has alleged that Mr. Kaheru submitted that Mr. Nyandong was bleeding on arrival at the feet of Mr. Lole; this was in fact a question put to Mr. Lole during cross-examination intended to find out the conditions of Mr. Nyandong on arrival.

(iii) The fact that Mr. Nyandong was shamefully humiliated is not denied by the Claimant. The Claimant also admits that Mr. Nyandong does not exaggerate anything in his evidence. Mr. Nyandong stated under oath that Mr. Njenga, Loco Inspector was seen being beaten up; he also saw Mr. Singh, Inspector of Works being beaten up. His own Office Assistant Mr. Fernandes was beaten; Mr. Nyandong saw him bleeding.

(iv) The Claimant's submission that Mr. Nyandong willingly joined the strike and that he did not want Management to know of this must be dismissed as absurd. Mr. Nyandong's strenuous efforts to obtain Police help before the arrival of the mob should be remembered. Had the Police arrived in time Messrs. Kima and Lole would not have enjoyed the sight of his humiliation. Mr. Nyandong knew very well that he was liable to be a target of violence after Police protection and he must have decided not to take the risk of antagonising the strikers any further by escaping or refusing to return to the Makupa field with his escort. It is from this angle that we must view Mr. Nyandong's behaviour in returning voluntarily to the Makupa field with his escort. If, as the Claimant submits, Mr. Nyandong wanted to join the strike why did he not stay at his house or indeed report sick on the morning of 5th November, 1964.

11. Para. 14 - Mr. Yusuf Mohamed

(i) Mr. Ottenyo has not denied that the word "MAWE" was used during his meeting on 3rd November, 1964.

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All he has said is that it could have been "MWAMWL". The fact that Mr. Ottenyo did not discourage violence does not constitute a criminal offence and whether or not the police warned him of this is not the responsibility of the Respondent. The Respondent submits that absence of criminal proceedings is no evidence of innocence; it could well be that this was because of a technicality, a temporary shortage of public prosecutors or lack of adequate evidence to prove the offence beyond reasonable doubt. These are not reasons good enough to prohibit a responsible Management of a public undertaking from taking a purely administrative action in some such circumstances. Mr. Ottenyo's objection to giving evidence on oath should also be noted.

(ii) There is no doubt that wherever Mr. Mohamed was he had heard the word "Mawe" from the crowd and as a responsible Officer he did take steps to confirm what he had heard. Mr. Mkoji the D.I.R.O. confirmed that Mr. Mohamed spoke with him on the telephone on the evening of 3rd November and sought clarification of the context in which the word "Mawe" had been mentioned. The Court will have observed that whereas Messrs. Kima and Lole have denied that the word "Mawe" was mentioned during Mr. Ottenyo's meeting on 3rd November, Mr. Ottenyo himself did not question Mr. Mkoji about this particular point, instead he questioned Mr. Mohamed about it.

(iii) The Respondent does not understand the Claimant's reference to Mr. Mohamed writing the letter on behalf of the Senior African employees in Mombasa. From the evidence of Messrs. Nyandong and Bechitsao it has been established that Mr. Mohamed drafted the letter; that the contents of the letter were discussed at a meeting attended by those who signed it and that at that meeting the letter was amended before being forwarded to the G.M. The Claimant's assumption that "it was Mr. Mohamed himself who had intended to coerce the G.M. to victimise the Union Officials at Mombasa" is not, therefore, substantiated. The practice of getting a draft as a basis for a petition or memorandum is normal particularly where there are more than one signatories to a document.

12. Para. 15 - Mr. Jonah Bechitsao

The evidence before the Court is that Mr. Bechitsao was dragged out of his office by a number of strikers, was beaten up and sustained bodily injuries as a result of which he had to remain away from duty for a number of days. Mr. Bechitsao being the Housing Estates Superintendent, Mombasa is well known to most of the employees in Mombasa. He stated in Court that on arrival

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at Makupa field at about 8.15 a.m. on 5th November he did not find any Union Officials - Messrs. Lole and Kima having apparently left for Voi. His captors therefore lost interest in him and without further molestation he walked away to the Police Station. Earlier that morning Mr. Bechitsao had been informed by one of the sweepers namely, Mr. Maruguko Kamau that Mr. Lole had gone round the Housing Estates on the evening of 4th November urging people not to go to work on the morning of 5th November; that instead all employees should assemble at the Makupa Field instead of reporting for duty. Admittedly this is hearsay evidence but in view of the fact that he had earlier declared his intention to proceed with strike action in the presence of the D.I.R.O. this evidence must be accepted.

13. Management's paragraph

Mr. Evans Gakuo - Station Master, Changamwe

The Court will have noted that the evidence of Mr. Gakuo has not been challenged by the Claimant, It will be remembered that following the denial by Messrs. Lole and Kima of Management's submission that they had travelled from Mombasa to Voi urging staff who had reported for duty at intermediate stations to down tools, Management advised the Court that it would be necessary to call witnesses from various stations between Mombasa and Voi to establish that they had done so. Mr. Gakuo stated that between 8 and 9 o'clock that morning "two chaps appeared at the counter of his office". He identified one of those men to be a Mr. Chuma a resident at Changamwe landhies. This Mr. Chuma asked him why he was at work and Mr. Gakuo replied he understood that an agreement had been signed between Management and the Union. Outside the station Mr. Gakuo was able to identify Messrs. Lole and Kima in a Volkswagen car. He spoke to Mr. Lole and Mr. Lole ordered him to close his

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office since everybody was on strike in Mombasa. Mr. Lole referred to Mr. Gakuo's "imperialist mentality", and Mr. Ottenyo was not able to establish that Messrs. Lole and Kima and two others had not called at Changamwe station during cross-examination.

14. Mr. Joash Joel

Mr. Joel's evidence is that his own staff of the Engineering Department were on strike on the morning of 5th November between Mombasa and Mariakani. Mr. Joel however stated quite clearly that the staff of the Traffic Departments i.e. station staff were on duty between Mombasa and Mariakani. He called at Changamwe and saw the station open; he called at Miritini and saw the station open; he called at Mazeras the station was open and he stopped at Mariakani where information was received by the Station Master that a car load of Union Officials was proceeding up the line urging staff to stop work. The only Union car again a Volkswagen that reached Mariakani was that used by Messrs. Lole and Kima which had been seen by Mr. Gakuo at Changamwe earlier that morning.

15. Para.16 - Mr. Erastus Ndinga - Station Master, Samburu

The evidence of Mr. Ndinga is not in any way inconsistent with that of Mr. Joel. During cross-examination Mr. Joel stated that after Messrs. Lole and Kima had passed Mariakani he later came to know that they had stopped one of his gangs between Mariakani and Samburu. Mr. Ndinga stated that about 10 o'clock he saw a Volkswagen car from which Mr. Lole and four other persons emerged. They asked him why he was on duty and before he could answer Mr. Lole was banging station bells without his permission. Mr. Lole ordered him out of his office where he saw that the Permanent Way Maintenance Gang that had been working had left work in obedience of instructions issued by one of the men who had arrived in the car. Mr. Ndinga reported the incident to the District Control Office immediately and it was confirmed that people were suppose to be at work. The Claimant's submission that Mr. Ndinga did not tell the truth is a confusion brought about by his own ignorance of the geographical position of the two stations.

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16. Para. 17 - Mr. Christopher Sakwa, Station Master, Mackinnon Road.

Some doubt has been cast over the evidence given by Mr. Sakwa because he did not report the visit to his station of Messrs. Lole and Kima to Mr. Smith the Permanent Way Inspector. The fact that Messrs. Lole and Kima visited Mackinnon Road station is not in dispute; Messrs. Lole and Kima have admitted doing so. The difficulty therefore is to explain why Mr. Sakwa did not report the visit of the Branch Officials to Mr. Smith. It will be recalled however that Mr. Sakwa's evidence is that he saw Mr. Lole outside his station and being interested to know what they were there for he went out and spoke to him. He immediatedly noticed that a Permanent Way Maintenance Gang that had been at work on the Mombasa side of the station had downed tools. In his own words Mr. Lole asked him "don't you know we are on strike". Meanwhile the gangmen went to their landhies and Mr. Lole and his companions left the station. Mr. Sakwa immediately reported the incident to the District Control Office in Mombasa. Management's explanation is therefore that having reported this incident to the District Control Office in Mombasa which was the only office co-ordinating the position in the District he was under no obligation to mention the incident to Mr. Smith who was not a superior officer of his own Department. There is every possibility that Mr. Sakwa mentioned this visit by the Branch Officials to the superior officer of his own Department who accompanied Mr. Smith during this tour. The evidence of Mr. Smith is unfortunately silent about this point.

17. Para. 18 - Mr. Smith, P.W.I. Mombasa

The Claimant describes Mr. Smith's evidence as "accurate and sincere". Mr. Smith does not however admit having spoken with Messrs. Lole and Kima when they waved to him at Voi at about 4 p.m. The Court will be aware that both Messrs. Lole and Kima alleged that Mr. Smith told them that Mr. Ottenyo was in Mombasa addressing strikers at Makupa. It is important to remember that when departmental officers pay a joint visit to any places along the line each officer confines himself to staff and work of his own department. It is therefore understandable that whereas Messrs. Ndinga and Sakwa did not speak to Mr. Smith they are likely to have spoken with Mr. Hilton the Assistant Yard Master a member of their own Department though they had already reported the incident to the District Control Office. The Court will also note that whereas Lole stated that they arrived at Voi at 1.15 p.m. and on being told that Mr. Ottenyo was addressing a rally at Shimanzi they immediately returned to Mombasa. Mr. Smith stated that about 1.30 p.m. he was at Mackinnon Road and did not get to Voi until 2.45 p.m. From Mackinnon Road to Voi is a distance of about 40 miles by road. If the Claimant accepts the evidence of Mr. Smith (and he has declared that he does) then he must reject that of Messrs. Lole and Kima so far as this incident at Voi is concerned. The Respondent therefore submits that from the evidence before the Court Messrs. Lole and Kima found Mr. Smith at Voi and that they did not arrive at Voi before 4 p.m. when Mr. Smith saw them arriving at about 4 p.m. this was in fact the first time they were arriving at Voi. Mr. Smith's car must have overtaken that of the Branch Officials somewhere between Mackinnon Road and Voi. It could be of course that the Branch Officials had left the main road to visit one of the stations between Mackinnon Road and Voi when Mr. Smith's car overtook them. The Court will therefore have its own conclusion as to why it took Messrs. Kima and Lole eight hours to travel from Mombasa to Voi a distance of only 97 miles by road. Even if it is admitted, (and the Respondent does not) that the car in which they were travelling was an old one it does not seem reasonable or credible that the car that was mechanically sound to travel from Mombasa to Voi and back should have taken 8 hours stopping at Mariakani and Mackinnon Road alone and at those places for less than 15 minutes.

18. Paras. 19 & 22 - Mr. Raphael Mkoji, District Industrial Relations Officer, Mombasa.

(i) The yet unshaken evidence of Mr. Mkoji is as follows:-

On 3rd November he attended Mr. Ottenyo's meeting. Mr. Ottenyo himself has stated in Court that he offered Mr. Mkoji a chair. Mr. Mkoji heard Mr. Ottenyo ask the crowd as to what would happen to people who would attempt to go on duty during the strike. The crowd replied that they would stone them and beat them up. Mr. Ottenyo himself has not denied that he changed the subject and made no comments. Before 4 o'clock on 4th November, Mr. Mokji was instructed by the Chief Ports Manager to relay the news that the strike had been called off to the Branch Officials at Mombasa. He personally drove to the place of work of Messrs. Kima and Lole where he was informed that the two had proceeded in a car owned by a Mr. Omari to his office. Mr. Kima tried to avoid dealing with Branch matters. Mr. Lole was therefore informed of the agreement reached in Nairobi and requested to tell the workers that the strike had been called off. In Mr. Mokji's own words "Mr. Lole told him that what I had told him was Management propaganda and he was not prepared to listen to it". Mr. Mkoji asked him to telephone headquarters and confirm the information. Before leaving Mr. Mkoji's office however Mr. Lole telephoned his own Branch Office where he told the man at the other end that the "strike was definitely going to take place as planned and warned them against Management propaganda". Later on, on the evening of 4th Mr. Mkoji made several attempts to get Messrs. Lole and Kima to call off the strike but the Branch Officials were determined to proceed with strike action. What other evidence is needed in this Court to establish beyond reasonable doubt that Messrs. Lole and Kima were responsible for organising in detail strike arrangements at Mombasa and that they accepted the responsibility for whatever happened during the strike. Mr. Lole confessed that he had received instructions from Mr. Opiyo the Union's National General Treasurer to call off the strike. Had he in fact endeavoured to implement the instructions then there could have been a shadow of doubt that they were not responsible for subsequent events.

(ii) Mr. Makoji stated in this Court that he did not prepare the report to the General Manager and that some parts of the report were extracts from his own. The Respondent has not claimed that the report was solely obtained from information gathered from Mr. Mokji. The Principal Industrial Relations Officer, Mr. Mwangola has given evidence that he compiled the report following his visit to Mombasa and obtained information from the Police, Hospital, Staff etc. and that the document before the Court is an extract from a report to the General Manager based on information obtained from various sources.

19. KISUMU

Management accepts that there was no serious disturbance at Kisumu but the cause of the unofficial stoppage was the refusal by the Branch officials, Messrs. Bubwerwa and Eku as in Mombasa to accept instructions issued by their National leaders. Mr. Muthee the then Acting Principal Industrial Relations Officer was at Kisumu on the evening of 4th November. While at the Station Master's Office Messrs. Bubwerwa and Eku arrived and requested permission to telephone their headquarters. Although Mr. Muthee did not know who they spoke to he understood that they were being told that the strike had been called off. Mr. Muthee urged them to call off the strike but Mr. Bubwerwa and in the words of Mr. Muthee "did not agree and insisted that they had no official confirmation and would continue with strike action". The Court will be aware of the type of Mr. Bubwerwa's leadership at Kisumu by reading Appendix 'C' the letter addressed to the Railway African Union (Kenya) and to the Railway European Staff Association, Kenya. The letter is reproduced below for ease of reference.

"OPEN LETTER TO:

Railway African Union,
Kisumu Branch,
P. O. Box 107,
KISUMU.

4th November, 1964.

The Secretary,
Railway Asian Union (Kenya)
Nairobi.

The Secretary,
Railway European Staff Association (Kenya)
Nairobi.

Dear Sirs,

RAILWAY AFRICAN UNION GENERAL STRIKE

It is being rumoured that your organisations have been tipped by Railway Management to bring in your families to work during the period the African employees will be on strike. I wish to remind you that your attempt to do so will be considered as creating enemity among the races and might result into some serious damages to certain people's lives.

I warn you to be aware of the danger you brown/white races are looking for. Anyone seen going to work who formerly has never been an employee of the Railways will be resisted strongly by our members. My Union has never interfered into your affairs but to bring in your long nose in ours is a sign of imerialistic attitude. Tell your communities to watch their steps, they may be taking a route of no return.

Your dogmatic attitude of continued blood sucking the African people in their motherland must cease forthwith or else racial total war is smelt and no one will stop it.

My opinion will hail those Asians and Europeans who will come out on sympathy strike in support of the African claims.

Yours faithfully,

Sgd. Paul K. Buberwa,
Branch Chairman R.A.U. Kisumu

Copies to the Press"

PART II

20. In considering this issue the Respondent respectively requests the Court to take cognisance of the following facts:-

(a) The Branch Officials namely, Messrs. Lole, Kima and Bubwerwa are first and foremost employees of the E.A.R.& H.; indeed were it not so they would not have been Branch Officials of the R.A.U. (K);

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(b) the Management of the E.A.R.& H. has an unquestionable right as an employer who operates on an inter-territorial basis to transfer its staff to any part of East Africa at any time as and when it is considered necessary in the interests of good administration and in the general interests of the service.

(c) In the E.A.R.& H. service a transfer of an employee is not regarded as a punishment. The Respondent admits that an employee being transferred may be subject to some minor inconveniences but then there is an allowance to cover this known as a Disturbance Allowance which is intended to compensate an employee for these minor inconveniences. Messrs. Lole, Kima and Bubwerwa were entitled to this allowance or any benefits obtainable by employees on any administrative transfers.

21. It has been alleged by the Claimant that Mr. Lole was originally to be transferred to Mikumi where cranes did not exist. It has been established that cranes exist at Mikumi and that Mr. Lole had not transferred to that station because it was discovered in good time that he was not qualified or licensed to drive mobile cranes which are at Mikumi. It has also been alleged that Mr. Kima had been transferred to Mwanza where his services could not be fully utilised. The evidence before the Court is that he was under close supervision at Mombasa. At Mwanza however he was solely responsible for all mechanical and electrical maintenance work and following the unfortunate death of his predecessor at Mwanza it was necessary for Management to send a man who could be entrusted, without any supervision, with the efficient maintenance of the valuable assets of the E.A.R.& H. It was the opinion of Management that Mr. Kima should be entrusted with the duties.

22. From the evidence before the Court it has been established beyond reasonable doubt that Mr. Ottenyo the National General Secretary of the Union when addressing his members in Mombasa on 3rd November, 1964 he did not discourage

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violence though his listeners left him in no doubt that they intended to take the law into their own hands during the strike. The employees who have been transferred were present at this meeting and if they had not approved the apparent encouragement for violence of their National General Secretary they had every right to take the earliest opportunity to denounce violence during the strike. It has further been established that the Branch Officials at Mombasa and Kisumu received instructions in good time from their National Headquarters on 4th November, 1964 to call off the strike and that the Branch Officials at those two stations refused to comply with them under the pretext that it was too late to call off the strike. The Ag.Asst. Principal Industrial Relations Officer Mr. Muthee and the District Industrial Relations Officer Mr. Mkoji have given evidence to this effect. In refusing to call off the strike the Branch Officials must have realised that by proceeding with strike action at midnight on 4th/5th November, 1964 they were acting against the instructions of their own superior officers. The Claimant does not deny this. It has further been proved beyond reasonable doubt that Messrs. Kima and Lole did on the morning of 5th November, 1964 leave Mombasa stopping at intermediate stations for Voi urging and ordering staff who had reported for duty to stop work. Their story that they left Mombasa to find Mr. Ottenyo at Voi must be rejected since Mr. Smith's evidence that he never spoke with them has been accepted by the Claimant. The false nature of the evidence by Messrs. Lole and Kima can be seen by their denials of having stopped at various stations along the line. Their evidence being false should be disregarded.

23. The strike at Mombasa was not a peaceful stoppage of work. There was a severe inconvenience to members of the public resulting from the two days withdrawal of labour; the injury to senior African and Asian employees of the E.A.R.& H. which led to lamentable lowering of morale and despondency amongst the supervisory staff of all races. Naturally Management could not just do nothing about it if any semblance of morale and efficiency was to be maintained in the E.A.R.& H. Had the Branch Officials accepted the instructions of the National leaders and the information about the Nairobi Agreement from various sources all this might have been avoided. The Branch Officials must have known that some employees on hearing the news of the Nairobi settlement would turn up for duty on the understanding that the Union approved their resumption of duty and therefore a clash between employees would be inevitable.

24. The court is aware of Mr.Ottenyo's story regarding his failure to get to Mombasa having reached Voi. The Union has also confessed that Mombasa is one of the three most difficult branches that the Union has how much responsibility rests with the Executive Committee in instructing Mr.Ottenyo to go as far as Voi alone and how much of this rests with the Branch Officials at Mombasa for what happened in Mombasa on 5th November is for the Court to determine. Mr.Ottenyo's reluctance to give this information on oath makes the credibility of his explanation very flimsy.

25. Amendment to Staff Regulation G.2

The Union has accepted that certain of the Union's officials are incapable of conducting themselves in such a way as to make negotiations and consultations possible or for negotiations to be conducted in either civilised way or in the spirit of "give and take". Mr.Ottenyo has himself declared that one of his officials is incapable of behaving himself in a civilised way during negotiations and consultations with Management. He has further stated that a particular Union Official is incapable of decent behavior even to members of his own family. The Court has also witnessed a member of the Union Executive Committee, Mr. J.Aram, telling a lie, while under oath, that certain expatriate officers in the E.A.R.& H. never attended school when he knows the truth. It is in the light of the mounting degree of abuse, threats against representatives of Management, threats of deportation from the country of expatriate staff that Management has found it necessary to put a suitable addendum to S.R.G.2(a) in the interest of good administration. The Respondent trusts that the Court will appreciate that it cannot be the policy of the R.A.U.(K) to utter, write, publish threats of any kind or obstruct or otherwise act or conduct itself in such a manner offensive to or against any member of Management of the E.A.R.& H. If this be so then the Union has no cause to complain of this addendum, because this Regulation will never be invoked to active but peaceful Union leaders.

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Management representatives cannot be expected to tolerate uncivilised behavior towards them.

26. Finally, (a) Victimisation, as defined by the Concise Oxford Dictionary, means "(Trade Union) Making (ringleaders etc.) suffer by dismissal or other exceptional treatment."

It is submitted that the transfer which the various Union Officials underwent does not constitute victimisation as defined in the dictionary or as is generally understood. They underwent an administrative transfer like all other employees of the Administration with full benefits normal to administrative transfer.

(b) Management denies that the Union Officials have been victimised. Management insists that it transferred employees who were primarily responsible for the disgraceful events that occurred in Mombasa. Management similarly denies that the employees were punished in any way because a transfer is not a punishment and is only an action that Management can take in the interest of the service to the Public.

(c) By disobeying the instructions of the National leaders the officials withdrew from themselves any protection from victimisation. Management considered that it was not inhibited in any way from taking some action against them.

(d) It is impracticable for the Management to prove beyond reasonable doubt that these men organized violence as they could not have done it right under the nose of members of Management. The Court is requested to ask the Police at Mombasa to provide them with the necessary information. If the two officials had been found guilty of organizing violence Police action would have been taken. But Management does not have to act only in cases where there is proof beyond reasonable doubt.

(e) The position at Mombasa was such that it was not in the interests of good administration to keep the Union officials at their stations. Particularly as there were humiliations, violence etc. of senior officials for which these two men were primarily responsible. The relationship was such that the officials had to be transferred and the morale of other employees had to be considered and to remove the source of friction.

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(f) The Union was given all opportunities to discipline its officials but the Union did not take the matter seriously. The Court is referred to the minutes of the three meetings between the General Manager and the Union, and also between Ministry of Labour, Management and Union representatives.

The confession in Court by the Claimant that certain of the Union's officials are incapable of behaving in a civilised manner during negotiations and consultations demonstrated how necessary it is for the addendum to S.R.G.2(a) to be retained; and it may interest the Court to know that since one of these officials was disciplined under this addendum there has been a considerable change of attitude by Officials of the Union during negotiations and consultations with representatives of Management.

(g) Management maintains that it would be a severe blow to maintaining discipline and morale in the E.A.R.& H. if the four employees were to return to their previous stations. The effect of such an action would be tantamount to approval of what the Union leaders did in Mombasa and Kisumu.

The Court is requested to dismiss the Claim.

EAR&H: Final Submission to the Industrial Court, Kenya, by EAR&H on the Issue of 'Alleged Victimisation of Union Officials'. 1965. TS Papers of African Trade Unions: East African Railways and Harbours (EAR&H) Box 1 B7. Nuffield College Library, Oxford University. Decolonization: Politics and Independence in Former Colonial and Commonwealth Territories, link.gale.com/apps/doc/AIULCB994334970/DPIT?u=webdemo&sid=bookmark-DPIT&xid=65ff839b&pg=1. Accessed 4 Dec. 2022.